

NTSB Order No.
EM-76

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 25th day of September 1979.

JOHN B. HAYES, Commandant, UNITED STATES COAST GUARD,

v.

WILLIAM HENRY HARDSAW, Appellant

Docket ME-74

OPINION AND ORDER

Appellant, William H. Hardsaw, seeks review of the Commandant's decision (Appeal No. 2138) affirming the 3-month suspension of his license (No. 05295) for negligence while operating the tug COLUMBIA.

Appellant had appealed to the Commandant from the initial decision of Administrative Law Judge Charles J. Carroll, Jr., issued following the hearing.¹ The law judge found that on September 15, 1977, appellant was operating the COLUMBIA, pushing the crane barge JAN B in the vicinity of the San Francisco-Oakland Bay Bridge; that appellant failed to ascertain that the crane's height was 195 feet above the water; and that he attempted to pass under the bridge at a point where the clearance was less than 184 feet, doing damage to both the bridge and the crane barge. These facts were stipulated by appellant, who entered a plea of guilty to the charge of negligence.

The only issue at the hearing and on appeal has been the appropriate sanction. Appellant, who has been represented by counsel throughout the proceeding, contends that the 3-month suspension imposed by the law judge should be set aside or substantially reduced. More specifically, appellant argues that: (1) The law judge's reference to and reliance on the table of average orders² in assessing sanction was in effect an unwarranted

¹Copies of the decisions of the Commandant and law judge are attached.

²46 CFR 5.20-165.

restraint upon his discretion since the table is not an "average" of any kind; (2) the Chief Administrative Law Judge impairs the free exercise of judicial discretion of other law judges because he regularly criticizes those sanctions he feels to be too lenient; (3) the law judge misclassified appellant's offense; and (4) the sanction was inordinately harsh. Counsel for the Commandant has filed a brief in opposition.

Upon consideration of the briefs and the entire record, we have determined that the law judge's findings of fact, as affirmed by the Commandant, are supported by reliable, probative, and substantial evidence. We adopt those findings as our own and conclude therefrom that appellant's negligence was established. Moreover, we agree that, under the circumstances of this case, appellant's negligence warranted the sanction here imposed.

The introductory language to the scale of orders contains the following caveat:

(a) The Table 5.20-165 is for the information and guidance of administrative law judges. The orders listed for the various offenses are average only and should not in any manner affect the fair and impartial adjudication of each case on its individual facts and merits.

We view this regulation as a legitimate attempt by an agency to create some degree of uniformity without being so restrictive as to tie a law judge's hands in tailoring a remedy to fit individual cases. Properly applied, the table will tend to have the effect of treating like cases in a similar fashion for purposes of sanction. We will not, as suggested by appellant, presume that Coast Guard law judges ignore the clear and unequivocal discretion granted them in discharging their responsibilities under this regulation, nor do we find that the offense was misclassified under the table of average orders by the law judge. The charge was "negligence" and the specification sets forth the breach of a duty of due care and the damage resulting therefrom. This offense clearly met the description in the table for ordinary negligence.³

Appellant also seeks an investigation of his claim that the Chief Administrative Law Judge is exercising improper "command

³Id. Negligence is listed under Group D offenses as "Neglect of duty; damage to ship, cargo, or personnel (ordinary negligence)". See also 46 CFR 5.05-20(a) (2) for the definition of negligence.

influence" over Coast Guard law judges.⁴ That is beyond our function of appellate review. Absent any showing of an attempt to influence the law judge in this case, the affidavit does not provide any basis for invalidating the initial decision.⁵

Turning to the period of suspension, appellant has presented no legitimate mitigating factors which would warrant a reduction in the sanction. The fact that the collision was the product of a "mistake" does not diminish the seriousness of the offense which caused property damage and endangered life. Although the negligence in this case was not gross or wilful, the lesser degree of negligence herein does not obviate the need for a sufficient sanction to instill in appellant a regard for the importance of greater caution in the future.

ACCORDINGLY, IT IS ORDERED THAT:

1. The instant appeal be and it hereby is denied; and
2. The order of the Commandant affirming the suspension of appellant's license by the law judge be and it hereby is affirmed.

KING, Chairman, DRIVER, Vice-Chairman, McADAMS, GOLDMAN and BURSLEY, Members of the Board, concurred in the above opinion and order.

⁴Appellant's claim rests on an affidavit of his counsel which states that "On several occasions I have been advised by Coast Guard personnel, believed by me to be knowledgeable, that sentences of the Administrative Law Judge...are reviewed by the Chief Administrative Law Judge in Washington, and that cases wherein the Chief Judge believes the trial sentences to be too lenient adverse criticism is expressed to the sentencing judge."

⁵Petition of Cooper, 2NTSB 1503 (1975), aff'd 546 F. 2d 870 (10th Cir. 1976). The statement therein that the affidavits alleging command influence were "utterly lacking in specificity and insufficient to raise any justiciable issue" (at 1505) applies with equal force in this case.